

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

AJ KWIATKOWSKI, et al.,

Plaintiffs,

v.

LESLIE COOLEY DISMUKES, et al.,

Defendants.

Case No.

3:26-cv-00098-SCR-WCM

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR
A PRELIMINARY INJUNCTION**

In 2024, this Court held that Defendants violated the Eighth Amendment by imposing a *de facto* ban on gender-affirming surgery for state prisoners suffering from gender dysphoria. By categorically prohibiting potentially necessary medical treatment, Defendants failed to provide “the individualized medical evaluation the Eighth Amendment requires.” *Zayre-Brown v. NCDPS*, No. 3:22-cv-191-MOC-DCK, 2024 WL 1641795, at *3 (W.D.N.C. Apr. 16, 2024) (hereinafter “*Zayre-Brown II*”), *opinion vacated, appeal dismissed sub nom. Zayre-Brown v. NCDAC*, No. 24-6477, 2024 WL 4925046 (4th Cir. Nov. 25, 2024) (vacating judgment and dismissing defendants’ appeal after plaintiff was released from prison).

Now the state legislature has effectively codified this surgery ban and restricted the use of hormone therapy, a treatment that the North Carolina Department of Adult Correction (DAC) has long recognized may be medically necessary to treat gender dysphoria. This statute, known as HB805, prohibits state funds from being “used, directly or indirectly, for the performance of or in furtherance of surgical gender transition procedures,

or to provide puberty-blocking drugs or cross-sex hormones to any prisoner” in state custody. (D.E. 18-2, 2025 N.C. Sess. Laws 84 § 3.(a)(b1)). These treatments are only permitted if a patient would suffer “imminent physical harm.”

Plaintiffs are state prisoners who have been diagnosed with gender dysphoria. They are currently prescribed hormone therapy, and some are candidates for gender-affirming surgery. They have faced abrupt stoppages in their hormone therapy since the law’s passage and experienced predictable suffering as a result. Their requests for surgery have been summarily denied.

Plaintiffs, individually and on behalf of a putative class, challenge Section 3.(a)(b1) of HB805 under the Eighth Amendment. They respectfully move the Court to preliminarily enjoin enforcement of that provision statewide. Plaintiffs are not asking the Court to order any particular course of treatment for any particular person. They are simply asking that their serious medical condition – gender dysphoria – be treated according to medical necessity like any other condition.

Plaintiffs will likely succeed on the merits of their Eighth Amendment claim. On its face, the “imminent physical harm” requirement violates the Eighth Amendment by imposing a medically inappropriate barrier to potentially necessary care. This requirement is an extreme departure from DAC’s own longstanding policy and widely accepted clinical guidelines – it is *never* appropriate to withhold treatment until a patient’s condition significantly deteriorates. *See Gordon v. Schilling*, 937 F.3d 348, 359 (4th Cir. 2019). And the statute fares no better in application: Defendants are withholding prescribed medications simply to determine whether patients will suffer enough to justify their continued use. Requests for gender-affirming surgery are no longer being considered at all.

Without preliminary relief, Plaintiffs will continue to experience psychological harm as they anticipate that their hormone medication may be cut off at any time, exposing them to a host of painful, humiliating, and dangerous side effects. And Plaintiffs' requests for gender-affirming surgery will continue to be automatically denied, regardless of whether an objective qualified clinician would find them medically necessary. An injunction will not harm Defendants in any way and will serve the public interest.

For these reasons and as discussed below, the motion should be granted.

FACTS

I. DAC has long acknowledged that gender dysphoria is a serious medical condition that requires treatment based on a patient's individual needs.

The term "gender identity" is a well-established concept in psychology and medicine, referring to a person's internal sense of belonging to a particular gender. Every person has a gender identity. All human beings develop this elemental internal conviction of belonging to a particular gender, such as male or female. For transgender and gender non-conforming individuals, this deeply felt sense of gender does not align with the sex that they were assigned at birth. (D.E. 18-1, Declaration of Dr. Randi Ettner (hereinafter "Ettner Decl."), ¶¶ 20–22).¹

Gender dysphoria is a serious medical condition that some, but not all, transgender and gender non-conforming people experience because of this disparity. (*Id.* ¶¶ 23, 30–31). Gender dysphoria is characterized by (1) a marked incongruence between an

¹ Dr. Ettner is a clinical and forensic psychologist with expertise concerning the diagnosis and treatment of gender dysphoria. She has extensive experience treating transgender individuals with gender dysphoria in her clinical practice and has published numerous books and articles on the topic. She has also frequently served as an expert witness in federal court in cases concerning health care for incarcerated transgender persons. (Ettner Decl. ¶¶ 1–15 & App. A).

individual's sex assigned at birth and the individual's gender identity, (2) strong cross-gender identification, and (3) clinically significant distress or impairment of functioning. (*Id.* ¶ 32). Gender dysphoria is recognized by the American Psychiatric Association and listed in the DSM-V and the World Health Organization's International Classification of Diseases-10. (*Id.* ¶¶ 24–29). Like many medical conditions, gender dysphoria can be ameliorated through treatment. (*Id.* ¶¶ 51–52).

The World Professional Association for Transgender Health (“WPATH”) publishes internationally accepted Standards of Care (“WPATH Standards”) for treating gender dysphoria. (*Id.* ¶ 6, 47–48). They set forth clinical guidelines for gender-affirming medical interventions. (*Id.* ¶ 58). The current WPATH Standards, published in 2022 as version 8, set forth medically accepted standards of care for medical professionals treating gender dysphoria. (*Id.* ¶¶ 7, 47).

Additionally, the Endocrine Society publishes *The Endocrine Treatment of Gender Dysphoric/Gender-Incongruent Persons: An Endocrine Society Clinical Practice Guide-line* (2017) (“Endocrine Society Guidelines”), setting forth “authoritative clinical guidance on the administration of hormone therapy to gender dysphoric patients” by medical pro-viders. (*Id.* ¶ 47). The WPATH Standards and Endocrine Society Guidelines are “the in-ternationally recognized guidelines for the treatment of persons with gender dysphoria and inform medical treatment throughout the world.” (*Id.* ¶ 48).

The WPATH Standards and Endocrine Society Guidelines have been endorsed by the American Medical Association, the American Psychological Association, the American Psychiatric Association, the World Health Organization, the American Academy of Family Physicians, the American Public Health Association, the National Association of Social

Workers, the American College of Obstetrics and Gynecology, and the National Commission on Correctional Healthcare. (*Id.* ¶ 49).

The Fourth Circuit has observed that the WPATH Standards “represent the consensus approach of the medical and mental health community. . . and have been recognized by various courts, including this one, as the authoritative standards of care” in both carceral and non-carceral settings. *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586, 595 (4th Cir. 2020) (citing *De’lonta v. Johnson*, 708 F.3d 520, 522–23 (4th Cir. 2013)). “There are no other competing, evidence-based standards that are accepted by any nationally or internationally recognized medical professional groups.” *Id.* at 595–96 (quoting *Edmo v. Corizon, Inc.*, 935 F.3d 757, 769 (9th Cir. 2019)); see also *Zayre-Brown v. NCDPS*, No. 3:22-CV-191-MOC-DCK, 2024 WL 410243, at *5 (W.D.N.C. Feb. 2, 2024) (hereinafter “*Zayre-Brown I*”) (“In the Fourth Circuit, requests for gender-affirming care are analyzed according to the WPATH standards.”).

The clinical standards for treating gender dysphoria establish treatment guidelines tailored to the needs of the individual patient. (Ettner Decl. ¶¶ 50, 52). These guidelines are the same regardless of whether the patient is incarcerated. (*Id.* ¶¶ 92–96). Treatments for gender dysphoria include social transition, psychotherapy, gender-affirming hormone therapy, and gender-affirming medical procedures to align an individual’s primary sex characteristics (genitals) and/or secondary sex characteristics (e.g., breasts, facial hair) with their gender identity. (*Id.* ¶¶ 66–89). Where medical care such as hormone therapy or surgery is indicated as medically necessary for the treatment of gender dysphoria, there is no alternative treatment that can serve as an adequate substitute for this care. (*Id.* ¶¶ 128–132, 137–40).

For years, DAC (formerly “DPS”) has recognized that gender dysphoria is a real medical condition that requires individualized treatment. DAC policy has also long recognized that, based on a patient’s individual needs, such treatment may include hormone therapy and gender-affirming surgery. *See Zayre-Brown I*, 2024 WL 410243, at *1 (noting DAC’s policy for considering medical needs of prisoners with gender dysphoria has been in place since at least 2019).

This Court recently addressed this process. *Id.* at *1–2. In short, DAC had a multidisciplinary team of healthcare providers and prison administrators evaluate the healthcare needs of prisoners diagnosed with gender dysphoria. DAC policy authorized accommodations and medical treatment including hormone therapy and gender-affirming surgery. *Id.*

Here, all named Plaintiffs have been diagnosed with gender dysphoria, and all have been undergoing hormone therapy for years. Plaintiff AJ Kwiatkowski, though assigned female at birth, understood that he was a boy as early as nine years old. (D.E. 18-4, Declaration of AJ Kwiatkowski (hereinafter “Kwiatkowski Decl.”), ¶¶ 4–5). His dysphoria intensified at puberty, and he was officially diagnosed with gender dysphoria at the age of 16. (*Id.* ¶¶ 7–8). He has been receiving hormone therapy since 2018 and successfully underwent gender-affirming top surgery in 2019. (*Id.* ¶¶ 8–9). Mr. Kwiatkowski entered DAC custody in 2023, and eventually his hormone therapy was continued in prison, though at a lower dosage than in the community. (*Id.* ¶¶ 10–12). In 2025, he underwent a total hysterectomy for reasons unrelated to his gender dysphoria diagnosis. (*Id.* ¶ 13).

Plaintiff Ashlee Inscoe was born with a congenital disorder of sex development. She was given a boy’s name and raised as a boy. (D.E. 18-8, Declaration of Ashlee Inscoe (hereinafter “Inscoe Decl.”), ¶ 5). Despite this, she has always felt that she is supposed to

be a girl. (*Id.*). She sought hormone treatment throughout her life and was diagnosed with gender dysphoria and approved for hormone therapy in DAC custody in 2018. (*Id.* ¶¶ 6–7). In 2022, Ms. Inscoe had surgery to remove her gonads based on urgent medical indications, which had the impact of affirming her gender. (*Id.* ¶ 8). She has been seeking gender-affirming vulvoplasty surgery from DAC since at least 2022, and her request was summarily denied in 2025 due to HB805. (*Id.* ¶¶ 13–14).

Plaintiff Pumpkin Snuggs was assigned male at birth but, in her mid-twenties, began to realize that she did not like the male form of her body and wanted it to be more feminine. She now knows herself to be a woman. Plaintiff Snuggs was first diagnosed with gender dysphoria in DAC custody in 2016 and has been receiving hormone therapy as treatment since 2017. (D.E. 18-5, Declaration of Pumpkin Snuggs (hereinafter “Snuggs Decl.”), ¶¶ 4–7).

Plaintiff LuluBell Frazier was assigned male at birth but has identified as a woman for most of her life. She attempted to transition in the community before her incarceration in 2011. (D.E. 18-6, Declaration of LuluBell Frazier (hereinafter “Frazier Decl.”), ¶¶ 4–6). She kept her gender identity a secret for several years while incarcerated, as she was scared to be out as transgender in prison. (*Id.* ¶ 7). In 2021 she decided with the support of a friend to come out and seek accommodations from DAC. (*Id.* ¶ 8). Ms. Frazier was officially diagnosed with gender dysphoria in DAC custody in 2021 and sought hormone therapy and gender-affirming surgery at that time. (*Id.* ¶ 9). She has been receiving hormone therapy since 2022 and continues to request gender-affirming vaginoplasty and total hair removal. (*Id.* ¶¶ 10, 14).

Plaintiff Tremayne Izzard, who was assigned female at birth, grew up playing with and identifying more closely with boys. (D.E. 18-7, Declaration of Tremayne Izzard

(hereinafter “Izzard Decl.”), ¶ 5). After coming to terms with his gender identity, he changed his name around 2012 and began taking hormone therapy to treat his gender dysphoria in 2013. (*Id.* ¶ 6). He entered DAC custody as a safekeeper in 2016, where he was able to continue his hormone therapy. (*Id.* ¶ 7). In 2021, Mr. Izzard received a hysterectomy for reasons unrelated to his gender dysphoria. (*Id.*). He continues to seek a gender-affirming mastectomy from DAC to treat his gender dysphoria. (*Id.* ¶ 14).

For each Plaintiff, hormone therapy is critical to their mental and physical health (Kwiatkowski Decl. ¶¶ 8, 18–19, 21, 27; Inscoe Decl. ¶ 7; Snuggs Decl. ¶ 7; Frazier Decl. ¶ 17; Izzard Decl. ¶¶ 10, 15). And for Plaintiffs Inscoe, Izzard, and Frazier, who have also submitted requests for gender-affirming surgery, additional treatment may be medically necessary to ameliorate their gender dysphoria symptoms.

Plaintiffs are not alone; rather, they are representative examples of the full putative class. In June 2025, DAC reported hundreds of prisoners seeking some form of accommodations for gender dysphoria, and dozens seeking hormone therapy.²

II. HB805 imposes medically unjustified obstacles to obtaining hormone therapy or gender-affirming surgery.

On July 29, 2025, the North Carolina General Assembly overrode Governor Stein’s veto to enact HB805. As relevant here, Section 3.(a)(b1) of the Act adds the following provision to state law:

No State funds may be used, directly or indirectly, for the performance of or in furtherance of surgical gender transition procedures, or to provide puberty-blocking drugs or cross-sex hormones to any prisoner incarcerated in the State prison system or the Statewide Misdemeanor Confinement Program or

² Grace Vitaglione and Rachel Crumpler, *NC Senate Republicans seek to define biological sex, dismiss gender identity*, NC Health News (June 17, 2025), <https://www.north-carolinahealthnews.org/2025/06/17/nc-senate-republicans-seek-to-define-biological-sex-dismiss-gender-identity/>.

otherwise in the custody of the Department of Adult Correction, or to support the administration of any governmental health plan or government-offered insurance policy offering surgical gender transition procedures, puberty-blocking drugs, or cross-sex hormones to any prisoner incarcerated in the State prison system or the Statewide Misdemeanor Confinement Program or otherwise in the custody of the Department of Adult Correction. Nothing in this subsection shall be construed to prevent State funds from being used, directly or indirectly, to address medical complications resulting in imminent physical harm, including the treatment of any infection, injury, disease, or disorder that has been caused by or exacerbated by a previously performed or privately funded gender transition procedure.

(D.E. 18-2, 2025 N.C. Sess. Laws 84, § 3.(a)(b1).

Plaintiffs’ attorneys sent DAC a public records request seeking information on how DAC would implement HB805. (D.E. 18-3, Declaration of Daniel K. Siegel (hereinafter “Siegel Decl.”), ¶ 7). Based on the response, it appears that Defendant Arthur Campbell, DAC’s chief medical officer, has been directing implementation of the new law. (*Id.*, Attach. A at 5–6). Dr. Campbell is a defendant in the *Zayre-Brown* litigation. In that case, this Court found that Dr. Campbell had implemented a *de facto* ban on gender-affirming surgery based on his belief that the procedure was never medically necessary for anyone. *Zayre-Brown I*, 2024 WL 410243, at *2; *Zayre-Brown II*, 2024 WL 1641795, at *3.

On September 22, 2025, Dr. Campbell wrote the following to other DAC officials concerning how current and new patients would be evaluated under the new law:

For transgender offenders currently prescribed HRT [hormone replacement therapy], the individualized review will be completed by DAC’s endocrinologist at the next evaluation for renewal of their current prescription. If the endocrinologist determines that “medical complications resulting in imminent physical harm” are likely to result from discontinuation of the therapy, then the medication can be continued

accordingly. If those medical complications do not exist for that particular offender, then the medication can be discontinued.

For new requests for initiation of HRT, the process will mirror that utilized for all other specialty treatment referrals, namely submission of request by the primary care practitioner (PCP), with routing through the existing Utilization Management (UM) system. These cases can be referred to the PCP through several mechanisms: (1) Offender self[-]referral, (2) Referral from mental health staff, or (3) Referral from Facility staff. The PCP will evaluate the offender, complete an abbreviated/focused history and physical examination, and as appropriate, route request through the UM process for final determination. The UM review authority will base their determination solely on the risk of “medical complications resulting in imminent physical harm”.

(Siegel Decl. Attach. A at 5–6 (italics and underlining omitted)).

This directive does not allow DAC healthcare providers to account for a patient’s mental health or long-term physical health when considering treatment. And, in the entirety of DAC’s response to Plaintiffs’ inquiry, no DAC official acknowledges even the possibility that a patient could ever qualify for gender-affirming surgery under HB805.

Pursuant to this directive, all Plaintiffs underwent a new evaluation for their gender-affirming hormone therapy that was a direct result of HB805, not because of any change or development in their medical needs. (Kwiatkowski Decl. ¶¶ 14–21; Snuggs Decl. ¶¶ 8–11; Frazier Decl. ¶¶ 11–15; Izzard Decl. ¶ 9; Inscoe Decl. ¶¶ 11, 14). Plaintiffs Kwiatkowski, Snuggs, Izzard, and Frazier had their gender-affirming hormone therapy reduced or cut off completely. Each experienced painful withdrawal symptoms including vomiting, diarrhea, cold sweats, and worsened effects of gender dysphoria. (Kwiatkowski Decl. ¶¶ 14–21; Snuggs Decl. ¶¶ 8–10; Frazier Decl. ¶¶ 12–13; Izzard Decl. ¶¶ 9–10). As a result of testosterone withdrawal, Plaintiff Izzard experienced dysphoria-exacerbating changes to his breast tissue that have not resolved since being placed back on his

medication. (Izzard Decl. ¶¶ 10, 13). And all were subjected to longer term health risks from discontinued hormone therapy such as cardiac complications and loss of bone density. (Etter Decl. ¶¶ 114–124).

Plaintiffs’ clinical visits and medical records confirm that DAC did this solely because of HB805’s new requirements — not because anyone’s treating physician thought it medically prudent. (Kwiatkowski Decl. ¶ 14; Snuggs Decl. ¶ 9; Izzard Decl. ¶ 9). Their medical records bear this out as well. (Ettner Decl. App. D at 3, 5, 7, 11, 15, 36–37). For example, Plaintiff Snuggs’ records state that her hormones were “on hold pending endocrinology review due to HB805” and “had to be stopped because of NC HB 805.” (*Id.* at 21, 11). Plaintiff Kwiatkowski’s medical records similarly report that he was informed by Dr. Wani that DAC would “have to stop his HRT” due to “the recent North Carolina State law HB 805” before his hormones were tapered and discontinued. (*Id.* at 5).

Only after this painful and humiliating experience did DAC resume these Plaintiffs’ hormone therapy. However, as with other prescription drugs, Plaintiffs must have their medications periodically renewed, usually every six or twelve months. (*See, e.g.*, Ettner Decl., App. D. at 2; Frazier Decl. ¶ 19). Plaintiffs are terrified that they will have to endure this medically unnecessary “evaluation” again and again to prove that they will experience imminent physical harm without their medication. (Kwiatkowski Decl. ¶¶ 26–27; Inscoe ¶ 15; Snuggs Decl. ¶¶ 14–15; Frazier Decl. ¶ 18–19, Izzard Decl. ¶ 15).

As for surgery, Plaintiff Inscoe filed an administrative grievance in September 2025 to check on her longstanding request for a vulvoplasty. DAC indicated in response to the grievance that her surgery would be denied, citing HB805’s prohibition on the use of state funds for such procedures. (Inscoe Decl. ¶¶ 13–14 & Attach. A at 3). Plaintiff Frazier also filed a grievance concerning surgery around this time, which DAC rejected,

explaining that it was “[b]eyond control of agency” and that any grievance “shall be rejected at any level if it . . . [c]hallenges matters beyond the control of the Department.” (Frazier Decl. ¶¶ 14–15 & Attach. A at 1–2). Plaintiff Snuggs was also told during a mental health call that DAC would no longer consider requests for surgery or initiate hormone therapy for newly incarcerated people. (Snuggs Decl. ¶ 11).

III. Interrupting or delaying gender-affirming care can cause serious harm.

The psychological and physical harms Plaintiffs have experienced “reflect foreseeable and preventable consequences of categorical policies that prohibit individualized medical assessment and medically necessary treatment.” (Ettner Decl. ¶ 142).

If untreated or under-treated, gender dysphoria is “strongly associated with elevated rates of depression, anxiety, suicidal ideation, and suicide attempts.” (*Id.* ¶ 125). In a prison setting where transgender and gender non-conforming people “experience heightened stress and limited autonomy, removal of medically necessary treatment compounds psychological vulnerability.” (*Id.* ¶ 126). Lack of available care in this setting may lead to “profound hopelessness—the belief that suffering is permanent and relief unattainable,” which is a “well-established predictor of suicide and is particularly dangerous in incarcerated populations who lack alternative avenues for care.” (*Id.* ¶ 127). The anticipation that care may be withheld presents psychological risks in and of itself. In prison settings where treatment policies are “unstable or unpredictable” psychological harm results from the anticipation and fear that medically necessary treatment may be withdrawn, such as “heightened anxiety, hypervigilance, sleep disturbance, and worsening dysphoria.” (*Id.*).

Hormone withdrawal comes with its own host of potential consequences. For that reason, “[u]nder accepted standards of care, medically necessary treatment is not discontinued in stable patients absent a clear medical contraindication. There is no recognized clinical justification under established professional guidelines for terminating effective hormone therapy for non-medical reasons.” (*Id.* ¶ 104). “Discontinuation of medically indicated hormone therapy predictably results in worsening dysphoria, emotional destabilization, anxiety, [and] depression” (*Id.* ¶ 102). In addition to serious psychological decompensation, withholding gender-affirming hormone therapy causes “immediate physiological effects” such as “vasomotor instability, sleep disturbance, fatigue, gastrointestinal upset, blood pressure variability, and mood dysregulation,” and may cause significant long-term physiological harms. (*Id.* at ¶ 114–15). “These outcomes reflect expected neuroendocrine and psychiatric responses rather than isolated or idiosyncratic reactions.” (*Id.* ¶ 102).

For transgender men, the discontinuation of testosterone causes “rapid androgen decline,” which can have “multisystem consequences” such as “loss of lean muscle mass, decreased bone density, metabolic instability, and increased cardiovascular risk.” (*Id.* ¶ 120). The withdrawal can lead to the return of menstruation and redistribution of body fat in a more stereotypically feminine fashion, further worsening gender dysphoria and other psychiatric symptoms such as insomnia, anhedonia (the inability to experience pleasure), depressive relapse, and increased suicidality. (*Id.* ¶ 121). The discontinuation of estrogen in transgender women suffering from gender dysphoria also carries physiological risks. “Removal of estrogen therapy destabilizes multiple physiological systems, including vasomotor regulation, lipid metabolism, and mood regulation.” (*Id.* ¶ 122). Without estrogen, individuals may experience a re-emergence of stereotypically

masculine traits such as body hair, which may “further intensify dysphoria and emotional instability.” (*Id.* ¶ 124).

For individuals like Plaintiff Inscoe who has undergone an orchiectomy, or Plaintiffs Kwiatkowski and Izzard who have undergone hysterectomies, hormone therapy is physiologically essential, as their bodies no longer produce sex hormones critical to the body’s functioning. Risks of withdrawal are amplified as a result. (*Id.* ¶ 116–117). The lack of appropriate hormone replacement is “associated with accelerated bone loss, increased cardiovascular risk, metabolic dysregulation, severe fatigue, and cognitive imbalance” – in essence, a systemic breakdown. (*Id.* ¶ 117). What’s more, the impact of hormone withdrawal on the neuroendocrine system “disrupts hormonal equilibrium and stress regulation systems,” thus physiologically intensifying negative psychological and psychiatric impacts. (*Id.* ¶ 119). These harms are “foreseeable and medically preventable” by continued treatment. (*Id.* ¶ 132).

The risks are similarly grave in denying access to medically necessary gender-affirming surgery. For some individuals suffering from gender dysphoria, “[s]urgical intervention may be medically necessary to achieve meaningful and durable relief.” (*Id.* ¶ 137). For these individuals, including those who have undergone partial surgical transition, “denial of further medically necessary procedures may leave them in a state of permanent anatomical incongruence, perpetuating dysphoria despite hormone stabilization.” (*Id.* ¶ 139).

As noted above, denial of medically necessary gender-affirming surgery leads to increased risk of suicidality. Additionally, “[i]n correctional settings where medically necessary treatment is withheld, individuals with severe gender dysphoria have been documented to engage in genital self-injury and attempts at . . . ‘surgical self-treatment.’” (*Id.*

¶ 133). The high incidence of such attempted self-treatment “reflects attempts to relieve persistent dysphoria in the absence of appropriate care.” (*Id.* ¶ 134). Injuries resulting from these attempts, especially to the genital region, carry significant and life-threatening medical risks such as “[s]evere hemorrhage,” “[i]nfection and sepsis,” “[p]ermanent nerve damage and chronic pain,” “[u]rinary tract injury,” “[d]isfigurement and functional impairment,” and death. (*Id.* at ¶ 135). Surgery should be provided where clinically indicated to prevent this predictable “progressive psychological and physical deterioration.” (*Id.* ¶ 106).

LEGAL STANDARD

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The district court “may assess the relative strength and persuasiveness of the evidence presented by the parties, and is not required to resolve factual disputes in favor of the non-moving party.” *Norris v. City of Asheville*, No. 1:23-CV-00103-MR-WCM, 2024 WL 1261206, at *2 (W.D.N.C. Mar. 25, 2024) (cleaned up).

ARGUMENT

I. Plaintiffs will likely succeed on the merits of their Eighth Amendment claims because HB805 creates an unjustified barrier to medically necessary care for non-medical reasons.

The Eighth Amendment’s prohibition of “cruel and unusual punishments” requires the government to “provide medical care for those whom it is punishing by incarceration.” *Estelle v. Gamble*, 429 U.S. 97, 103 (1976). “A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human

dignity and has no place in civilized society.” *Brown v. Plata*, 563 U.S. 493, 511 (2011). This guarantee accounts for mental health needs as well as physical ones. *Bowring v. Godwin*, 551 F.2d 44, 47 (4th Cir. 1977).

An Eighth Amendment claim of inadequate medical care has two components: “the plaintiff must demonstrate that the defendant prison official acted with deliberate indifference (the subjective component) to the plaintiff’s serious medical needs (the objective component).” *Gordon*, 937 F.3d at 356 (quotation marks omitted).

Plaintiffs will likely prove both.

A. Gender dysphoria is an objectively serious medical need that requires individualized treatment.

Starting with the objective prong, a serious medical need is “one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” *Iko v. Shreve*, 535 F.3d 225, 241 (4th Cir. 2008) (quotation marks omitted).

“Courts have routinely held that gender dysphoria is a serious medical need for purposes of the Eighth Amendment.” *Huskins v. Fox*, No. 5:17-CV-58-FDW, 2018 WL 3660203, at *2 (W.D.N.C. Aug. 2, 2018) (collecting cases); *see also De’lonta v. Johnson*, 708 F.3d 520, 522–23 (4th Cir. 2013); *Zayre-Brown I*, 2024 WL 410243, at *4; *Edmo v. Corizon, Inc.*, 935 F.3d 757, 785 (9th Cir. 2019); *Robinson v. Labrador*, 747 F. Supp. 3d 1331, 1340 (D. Idaho 2024). Indeed, prison officials rarely contest the issue. *See, e.g., id.*

Here, Defendants have confirmed the named Plaintiffs’ diagnoses of gender dysphoria and prescribed treatment including hormone therapy. Several seek additional gender-affirming medical care in the form of surgery; those requests were pending before passage of HB805.

It is well-known that denying or halting such treatment where clinically indicated exposes a patient to serious risks of severe psychological distress and increased risks of self-mutilation and suicide. *See supra* pp. 12–15. And, as noted above, discontinuation of hormone therapy creates additional health risks from withdrawal, impacting the metabolic, endocrine, cardiovascular, and musculoskeletal systems in ways that can be long-term or irreversible. (Ettner Decl. ¶¶ 114–124); *see also Benjamin v. Oliver*, 800 F. Supp. 3d 1314, 1330–32, 1335 (N.D. Ga. 2025) (recognizing the extensive risks of hormone therapy withdrawal and noting that, by exposing plaintiffs to the “increased danger” of the physical and mental side effects of hormone therapy withdrawal, defendants “have inflicted unnecessary pain and suffering upon the prisoner[s]” (cleaned up)).

Accordingly, Plaintiffs will likely satisfy the Eighth Amendment’s objective prong.

B. HB805’s ban on funding gender-affirming care shows deliberate indifference because it prohibits medical care for non-medical reasons.

Deliberate indifference requires a showing that government actors “actually know of and disregard an objectively serious condition, medical need, or risk of harm.” *De’lonta*, 708 F.3d at 525 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). “Deliberate indifference may occur where a prison official, having knowledge of a significant risk to inmate health or safety, administers blatantly inappropriate medical treatment, acts in a manner contrary to the recommendation of specialists, or delays a prisoner’s treatment for non-medical reasons, thereby exacerbating his pain and suffering.” *Perez v. Fenoglio*, 792 F.3d 768, 777 (7th Cir. 2015) (citations omitted); *see Estelle*, 429 U.S. at 104–05 (government officials demonstrate deliberate indifference by “intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed”).

What’s more, prison officials may not “withhold treatment from an inmate who suffers from a serious, chronic disease until the inmate’s condition significantly deteriorates.” *Gordon*, 937 F.3d at 359. And while prison healthcare policies need not be perfect, they do have to reflect sound medical practice. *See id.* at 361 (holding that “soundness of . . . reasons” underlying policy precluded summary judgment for prison officials); *Buffkin v. Hooks*, No. 1:18CV502, 2019 WL 1282785, at *11 (M.D.N.C. Mar. 20, 2019) (enjoining statewide policy in part because it was “not justified by any medical reason”).

Recently, multiple courts have enjoined prohibitions on gender-affirming care in prison, finding that they likely evinced deliberate indifference. *Benjamin*, 800 F. Supp. 3d at 1335 (enjoining statute where “Defendants’ only justification for placing these Plaintiffs in increased danger of these side effects is that they do not want to ‘use taxpayer money’ to fund interventions they deem ‘controversial’”); *Robinson*, 747 F. Supp. 3d at 1342 (enjoining blanket ban on hormone therapy); *see also Kingdom v. Trump*, No. 1:25-CV-691-RCL, 2025 WL 1568238, at *8 (D.D.C. June 3, 2025) (finding policy was likely “arbitrary and capricious because [defendants] provide no reasoned explanation for the denial of gender-affirming care, treat gender dysphoria different than other medical conditions with no justification, and fail to adequately take stock of the sudden reversal in agency policy”).

Here, HB805 categorically restricts medical care for a serious medical condition unless the patient faces “imminent physical harm.” Dr. Ettner explains, “This threshold is medically inappropriate and inconsistent with accepted standards of preventive and evidence-based care because it requires patients to deteriorate before treatment may be provided.” (Ettner Decl. ¶ 3). “Clinicians appropriately intervene to prevent foreseeable deterioration—not to delay treatment until harm becomes imminent.” (*Id.* ¶ 107). Before

HB805 became law, Defendants' own longstanding policy did not require patients to risk imminent physical harm to qualify for any treatment. But HB805 *requires* that they "withhold treatment" for a serious medical condition "until the inmate's condition significantly deteriorates." *Gordon*, 937 F.3d at 359.

Moreover, the fixation on imminent *physical* harm ignores the serious, and in some cases life-threatening, mental distress that Plaintiffs and others are at risk of experiencing. DAC must provide adequate care for prisoners' mental health needs. *Bowring*, 551 F.2d at 47; *Greason v. Kemp*, 891 F.2d 829, 834 (11th Cir. 1990) (noting "every reported decision handed down after *Estelle*. . . . recognize[s] that deliberate indifference to an inmate's need for mental health care is actionable on eighth amendment grounds"). "Gender dysphoria-related destabilization frequently manifests first as psychological decline," and "[s]evere depression, emotional dysregulation, and suicidality may precede measurable physical deterioration." (Ettner Decl. ¶ 109). HB805's standard, however, "disregards the well-established relationship between psychological destabilization and lethal outcomes." (*Id.*). "Waiting until risk escalates to a crisis-level threshold is inconsistent with accepted medical and psychiatric practice." (*Id.* ¶ 110).

Defendants' enforcement of the statute further demonstrates its constitutional defects. To qualify for hormone therapy, Defendants' "evaluation" protocol removes patients from their prescribed care and overrides a clinician's prior medical judgment merely to determine whether the patient will physically suffer. Taking prisoners off hormones pursuant to a statute is "not a medical judgment" but "a policy judgment." *Benjamin*, 800 F. Supp. 3d 1336; *see Estelle*, 429 U.S. at 104-05. Further, "[t]he consequences of hormone withdrawal are often progressive rather than immediately catastrophic," meaning that by the time DAC deems a harm "imminent" enough to warrant continuation of hormone

therapy, “underlying physiological damage may already have occurred.” (Ettner Decl. ¶ 108).

For patients who need to initiate hormone therapy, it is unclear if they could ever do so if they are not being forced to experience withdrawal symptoms. Perhaps a patient could qualify under HB805 if their condition deteriorates and they wind up on the verge of self-mutilation or suicide (Ettner Decl. ¶ 112), but the Eighth Amendment does not permit such cruelty. *See Gordon*, 937 F.3d at 359; *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (explaining that “the Eighth Amendment protects against future harm” and “a remedy for unsafe conditions need not await a tragic event”).

As for surgery, Defendants’ enforcement of HB805 perpetuates the blanket ban that this Court recently struck down. *Zayre-Brown II*, 2024 WL 1641795, at *3. The Fourth Circuit and other courts have recognized that a complete prohibition on potentially necessary treatment shows deliberate indifference because it does not allow evaluation and care based on a patient’s particular needs. *See Gordon*, 937 F.3d at 354 (addressing a “categorical denial of [hepatitis C] treatment”); *Colwell v. Bannister*, 763 F.3d 1060, 1063 (9th Cir. 2014) (explaining that a “blanket, categorical denial of medically indicated surgery . . . is the paradigm of deliberate indifference”). Numerous other courts have acknowledged this principle in the context of gender-affirming medicine: an official or de facto ban on gender-affirming surgery “would conflict with the requirement that medical care be individualized based on a particular prisoner’s serious medical needs.” *Kosilek v. Spencer*, 774 F.3d 63, 91 (1st Cir. 2014) (en banc); *Fisher v. Fed. Bureau of Prisons*, 484 F. Supp. 3d 521, 543 (N.D. Ohio 2020) (collecting cases); *see also De’lonta*, 708 F.3d at 526 n.4 (plaintiff stated an Eighth Amendment claim where prison officials “never allowed her to be evaluated by a [gender dysphoria] specialist”).

Here, when Plaintiffs checked on their pending surgery requests, DAC revealed that they had been denied explicitly because of the new statute. (Inscoc Decl. ¶¶ 13–14 & Attach. A; Frazier Decl. ¶¶ 14–15 & Attach. A). Tellingly, Defendants’ response to Plaintiffs’ public records request makes no mention of surgery, and further reveals that Defendant Campbell, who believes “gender-affirming surgery is *never* medically necessary,” is directing implementation of HB805. *See Zayre-Brown II*, 2024 WL 1641795, at *1.

In sum, HB805 imposes a scheme that requires DAC clinicians to either impose or wait for serious physical harm to befall patients – including attempted suicide – before providing treatment. This scheme is not based in medicine and runs counter to all established standards of care. Where treatment decisions lack foundation in medical judgment and place prisoners at a serious risk of harm, “the prisoner generally prevails.” *Benjamin*, 800 F. Supp. 3d. at 1323. That is the case here. Plaintiffs will therefore likely prevail on their Eighth Amendment claim.

II. Plaintiffs and other class members will suffer irreparable harm without preliminary relief.

“[T]he denial of a constitutional right, if denial is established, constitutes irreparable harm for purposes of equitable jurisdiction.” *Ross v. Meese*, 818 F.2d 1132, 1135 (4th Cir. 1987). When a plaintiff seeks preliminary injunctive relief for a constitutional violation, the “claimed irreparable harm is inseparably linked to the likelihood of success on the merits[.]” *WV Ass’n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009) (cleaned up); *accord Leaders of a Beautiful Struggle v. Baltimore Police Dep’t*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc).

As this Court and many others have acknowledged, an ongoing denial of a transgender prisoner’s right to adequate medical care for gender dysphoria and the

suffering that flows therefrom is irreparable harm. *Zayre-Brown II*, 2024 WL 1641795, at *3 (finding denial of individualized medical care constitutes irreparable harm); *Edmo*, 935 F.3d at 798 (“the deprivation of [a transgender prisoner’s] constitutional right to adequate medical care is sufficient to establish irreparable harm”); *Robinson*, 747 F.Supp. 3d at 1342 (finding plaintiffs had demonstrated irreparable harm due to “likely increase in emotional stress” and “likely decrease in sense of well-being if they lose access to hormone therapy.”); *Kingdom v. Trump*, No. 1:25-CV-691-RCL, 2025 WL 1568238, at *11 (D.D.C. June 3, 2025); *Benjamin*, 800 F.Supp.3d 1314, 1339; *Iglesias*, 2021 WL 6112790, at *26; *Hicklin*, 2018 WL 806764 at *10; *Norsworthy*, 87 F. Supp. 3d at 1193.

Here, Plaintiffs have shown a likelihood of success on the merits. And they face serious health consequences if their prescribed treatment is once again abruptly ended for non-medical reasons. This harm is not speculative – as noted *supra* pp. 10–12, it is a harm they have already been subjected to because of HB805, and the foreseeable consequence of withholding necessary gender dysphoria treatment. *See, e.g. Kingdom*, 2025 WL 1568238, at *11 (noting that plaintiffs receiving hormone therapy still demonstrate irreparable harm where their access to continued hormone therapy is “tenuous” and defendants have discretion to terminate care absent an order of the court). And their suffering is ongoing, as they deal with the adverse psychological consequences of uncertainty regarding whether they will be allowed adequate treatment, such as surgery, in the future.

Plaintiffs therefore satisfy the irreparable harm factor.

III. The balance of equities and public interest weigh strongly in favor of preliminary relief.

In evaluating the balance of equities, courts “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted).

Here, the balance of harms weighs strongly in favor of injunctive relief. DAC has previously recognized gender dysphoria as a serious medical condition for which their policies allowed treatment and would not be harmed by being required to continue providing or evaluating for medically necessary care consistent with their prior policy and the Constitution. *See, e.g., Robinson*, 747 F. Supp. 3d at 1342 (noting that where defendant prison policy provided hormone therapy prior to enactment of the challenged law, the balance of the equities “tips sharply” in favor of plaintiffs’ requested injunction). On the other hand, Plaintiffs and putative class members have been and will continue to be harmed by HB805’s ongoing enforcement for the reasons previously discussed — suffering from the actual or anticipated withholding or outright denial of crucial medical care.

The public interest is also served by injunctive relief. *See Benjamin*, 800 F. Supp. 3d. at 1340 (noting the state has no interest in enforcing an unconstitutional law in deciding to enjoin a ban on gender-affirming care); *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (“[U]pholding constitutional rights surely serves the public interest.”); *Flynn v. Doyle*, 630 F. Supp. 2d 987, 993 (E.D. Wis. 2009) (“The public has a strong interest in the provision of constitutionally-adequate health care to prisoners and this public interest argues in favor of granting the motion for preliminary injunction.”).

IV. A preliminary injunction would comply with the PLRA.

For cases concerning prison conditions, the Prison Litigation Reform Act (“PLRA”) states that “[p]reliminary injunctive relief must be narrowly drawn, extend no further

than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm.” 18 U.S.C. § 3626(a)(2). A court must also give “substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief.” *Id.*

The injunction sought here meets this narrowness standard. It would simply prohibit enforcement of a single statutory section applicable to the treatment of a single medical condition within prisons. The injunction sought does not impose any particular individualized treatment determination for any particular prisoner, but restores the status quo of DAC’s own policies prior to HB805’s enactment. It is thus the least intrusive means to correct the harm. *See Benjamin*, 800 F. Supp. 3d at 1347 (noting injunction prohibiting enforcement of gender-affirming care ban in prison but asserting no additional requirements aside from the status quo ante satisfied the PLRA). Moreover, the injunction sought broadly applicable to all members of the proposed class, making HB805 subject to a class-wide challenge, and statewide injunctive relief proper.³ *See Benjamin*, 800 F. Supp. 3d at 1347–48 (noting that the PLRA continues to permit injunctions afforded to prisoner classes in granting class-wide injunction for prisoners against statute prohibiting gender-affirming care). Moreover, this relief could not plausibly result in any harm to public safety. The relief sought complies with the PLRA.

V. The Court should waive Rule 65’s bond requirement or impose a nominal bond.

Federal Rule of Civil Procedure 65(c) provides that “a court may issue a preliminary injunction . . . only if the movant gives security,” but “the district court retains the

³ For the reasons stated in Plaintiffs’ Brief in Support of Class Certification, D.E. 19, the proposed class satisfied the requirements of Rule 23 and the class should, at a minimum, be provisionally certified in order to award preliminary statewide.

discretion to set the bond amount as it sees fit or waive the security requirement.” *Pashby v. Delia*, 709 F.3d 307, 331–32 (4th Cir. 2013), *abrogated on other grounds*, *Stinnie v. Holcomb*, 37 F.4th 977, 982 (4th Cir. 2022). This security requirement ensures the injured party is compensated for harms it may suffer because of an improper injunction. *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 n.3 (4th Cir. 1999). In cases where prisoners seek preliminary injunctive relief to obtain medically necessary care or to address medically harmful conditions, courts have commonly exercised their discretion to waive the security requirement. *See, e.g., Beck v. Hurwitz*, 380 F. Supp. 3d 479, 485 (M.D.N.C. 2019); *see also Chatman v. Otani*, No. 21-cv-00268-JAO-KJM, 2021 WL 2941990, at *24 (D. Haw. July 13, 2021); *Maney v. Brown*, 516 F. Supp. 3d 1161, 1185 (D. Or. 2021); *Criswell v. Boudreaux*, No. 1:20-cv-01048-DAD-SAB, 2020 WL 5235675, at *27 (E.D. Cal. Sept. 2, 2020); *Hernandez v. Cnty of Monterey*, 110 F. Supp. 3d 929, 958-59 (N.D. Cal. 2015).

Defendants face no risk of harm should an injunction issue. The injunction sought would allow DAC to follow its own policy as it had been doing before enactment of HB805. Finally, when a plaintiff of limited financial means seeks to vindicate their constitutional rights and there is significant public interest underlying the claim, waiver of bond is warranted. *Taylor-Failor v. Cnty of Hawaii*, 90 F. Supp. 3d 1095, 1103 (D. Haw. 2015).

Waiver is therefore appropriate. In the alternative, Plaintiffs respectfully ask that the Court order only a nominal bond. *See Hoechst*, 174 F.3d at 421 n.3.

CONCLUSION

In conjunction with certifying the proposed plaintiff class, the Court should enter a statewide preliminary injunction preventing enforcement of Section 3.(a)(b1) of HB805.

Respectfully submitted this the 18th day of March, 2026.

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CERTIFICATE OF SERVICE

I certify that on March 18, 2026, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will effect service on all counsel of record.

Respectfully submitted this the 18th day of March, 2026.

/s/ Jaclyn A. Maffetore

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Counsel for Plaintiff

CERTIFICATE OF AI COMPLIANCE

Pursuant to the Court's standing order on the use of artificial intelligence, Docket No. 3:24-mc-104, I hereby certify that no artificial intelligence was employed in the research for the preparation of the foregoing document except for such artificial intelligence embedded in Westlaw. I further certify that every statement and citation to authority in the foregoing document has been checked by an attorney in this case or a paralegal working at their direction as to the accuracy of the proposition for which it is offered and the citation to authority provided.

Respectfully submitted this the 18th day of March, 2026.

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